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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 629 68

THE CITY OF CLEVELAND,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

THOMAS A. BURKE, JR.,
Director of Law;
JOSEPH F. SMITH,
Assistant Director of Law,
Counsel for Appellant.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil No. 21897

UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY,

Plaintiffs,

vs.

JOHN J. BOYLE, COUNTY TREASURER OF CUYAHOGA COUNTY, OHIO; JOHN A. ZANGERLE, COUNTY AUDITOR OF CUYAHOGA COUNTY, OHIO; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, AND CITY OF CLEVELAND,

Defendants.

JURISDICTIONAL STATEMENT SUBMITTED BY DEFENDANT, CITY OF CLEVELAND.

The defendant-appellant, City of Cleveland, having presented this day their petition for appeal, now file this their statement on the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final order, judgment or decree in question and should exercise such jurisdiction in this case.

A. The Statutory Provision Believed to Sustain the Jurisdiction.

This appeal is prosecuted from a final order, judgment or decree which permanently restrains the defendants, tax assessing and tax levying officials of Cuyahoga County and the defendant, the City of Cleveland, in the State of Ohio, from taking any action to assess, levy, or collect taxes on certain lands owned by the plaintiffs in said City, as provided and required by the laws of Ohio, and the pleadings in the case, particularly the complaint of the plaintiffs allege that Sections 5328 and 5625-3 of the General Code of Ohio and proceedings thereunder contravene the Constitution of the United States.

The final judgment here appealed from was entered in the District Court of the United States for the Northern District of Ohio, Eastern Division, on November 19, 1943 by a statutory court consisting of one circuit and two district judges specially convoked under and by virtue of the provisions of Section 266 (as amended) of the Judicial Code (28 U. S. C. A. 380).

It is our contention that said section authorizes a direct appeal from the District Court to the Supreme Court of the United States, and particularly in the following exact language found at the end of the section:

> "and a direct appeal to the Supreme Court may be taken from the final decree granting or denying a permanent injunction in such a suit."

The above mentioned section provides that a three judge court be convened to hear either an application for an interlocutory injunction, or to hear the case on its merits when an order is sought "restraining the enforcement, operation or execution of any statute of the state by restraining the

action of any officer of such state in the enforcement or execution of such statute, * * *."

B. The State Statutes Which Are Involved.

The plaintiffs' complaint set forth that the lands and improvements of the United States of America described therein were assessed for taxation by the defendants in pursuance of the statutes of the State of Ohio, and that those statutes and particularly Ohio General Code Sections 5328 and 5625-3 contravene the Constitution of the United States when applied to property owned by the United States and the Federal Public Housing Authority.

Ohio General Code Section 5328 provides in substance as follows:

> "All real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom. * * * All property mentioned in this section shall be entered on the general tax list and duplicate of taxable property as prescribed in this title." (Throckmorton's One Volume Ohio Code. In 1940 Edition this section is found at Page 6 of Part Second.)

Ohio General Code Section 5625-3 provides in substance as follows:

> "The taxing authority of each subdivision is hereby authorized to levy taxes annually, subject to the limitations and restrictions of this act, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and the acquisition or construction of permanent improvements. * * * All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws, rules and regulations as are prescribed for the

assessment and collection of county taxes. * * * "
(Throckmorton's One Volume Ohio Code. In 1940 Edition this section is found at Page 175 of Part Second.)

In view of the fact that the action seeks to restrain an officer from carrying out the execution of the statutes of the State of Ohio and alleges the unconstitutionality of certain laws of the State of Ohio, we have exactly the situation that is outlined in 28 U. S. C. A., Section 380. We might add to this that the court in its Separate Findings of Law and Fact made a definite finding to the effect that "a substantial constitutional question was involved."

C. The Date of the Judgment or Decree Sought to Be Reviewed and the Date upon Which the Application for Appeal Is Presented.

The final order, judgment or decree here sought to be reviewed was entered and spread of record on November 19, 1943. On January 18, 1944 a motion was granted allowing a request by this defendant for an amendment to the Findings of Law and Fact, and on January 18, 1944 the defendant, City of Cleveland's motion for new trial was overruled.

This petition for appeal herein was presented and filed on the 9th day of February, 1944.

D. The Statement Showing That the Nature of the Case and of the Rulings of the Court Was Such as to Bring the Case within the Jurisdictional Provisions Relied on.

The plaintiffs have acquired by condemnation the lands involved in this suit, and the same were acquired for the purposes of establishing low-cost housing. The question involved herein arises out of the ownership of lands that were acquired by the United States of America by con-

demnation under the program for National Recovery, and does not involve property acquired for war housing or for the housing of war workers. The complaint alleges that the taxing officials and authorities of Cuyahoga County, Ohio and of the City of Cleveland have levied general taxes and special assessments against certain properties held in the name of the United States of America and on which the Federal Public Housing Authority has erected low-cost dwelling units. These units have been leased out to the Cleveland Metropolitan Housing, a State of Ohio Authority, and the latter has sublet the numerous dwelling units therein to individual tenants for residential purposes. The complaint alleges that certain officials of the Taxing Authority of the State of Ohio are attempting to collect taxes and assessments levied on said properties, and allege that the taxation laws of the State of Ohio, particularly Sections 5328 and 5625-3 of the General Code contravene the Constitution of the United States, and the complaint seeks to have the Taxing Authority and the respective officers restrained from collecting the taxes heretofore assessed and to restrain the Authority and officers from further levying taxes against these properties.

The complaint sought an interlocutory order and permanent injunction, but by agreement of parties the case was submitted on its merits at an early date without the granting of the interlocutory order. The case came on for hearing before a three judge court, as set up in 28 U. S. C. A., Section 380.

The court overruled motions to dismiss the complaint, granted a permanent injunction finding that a substantial constitutional question was involved, made a declaration that the taxes and assessments heretofore levied were null and void, and all notwithstanding the statutes of the State of Ohio requiring the authorities and officials involved to levy

and collect taxes except on such property as has been exempted and, further, notwithstanding the fact that no official of the plaintiffs made application to have said properties exempted, as required under the laws of the State of Ohio.

The answer of the defendant, City of Cleveland, alleges that the Act of September 1, 1937, and particularly that portion of it known as 42 U. S. C. A., 1405 (e), is illegal, invalid and contravenes the Constitution of the United States, and avers that the power to establish low-cost housing is not delegated to the Congress of the United States by the Constitution, and by virtue of the Tenth Amendment to the Constitution it is alleged that since the power is not specifically delegated, such powers are reserved to the states respectively and to the people. This raises another substantial constitutional question which by virtue of U. S. C. A., Title 28, Section 380a is a problem to be decided by a three judge court and provides that "appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character."

This appeal is prosecuted from the final order of the three judge court allowing a permanent injunction against collecting prior taxes or assessing future taxes.

E. Statement of the Grounds upon Which It Is Contended That the Questions Involved Are Sustained.

The order entered herein restrains Tax Levying Authorities and Tax Collecting Authorities from performing duties required of them under the laws of the State of Ohio. It must be concluded that this is upon the grounds that such laws of Ohio contravene the Constitution of the United States. Such action affects the revenues available to the State and its political subdivisions for the operation of the governmental functions and duties thrust upon them by

such housing developments. It requires the State or its political subdivisions to proceed with improvements such as the laying of water mains, pavements, sidewalks, establishing roads and building bridges, without being able to tax large areas of lands that are now devoted by the Government to residential purposes, and without giving to the taxing subdivision the power to assess such property for special benefits conferred upon it by such improvements. It compels the State to furnish schools for the children of people residing in such projects without any contribution or support from the property wherein they live.

A substantial constitutional question is raised by this defendant's answer wherein it is claimed that the power to provide low-cost housing is not within the powers delegated to Congress by the Constitution of the United States. We contend that the Government of the United States has no power to acquire, and particularly to acquire, by condemnation proceedings under eminent domain, private property for low-cost housing purposes. Such a decision has been made by the United States Circuit Court of Appeals for this the Sixth District. The case of *United States* v. *Certain Lands in the City of Louisville*, 78 Federal Second, 684.

F. Cases Believed to Sustain the Jurisdiction.

We believe that this case comes squarely within the recent decision of *Query, etc.*, v. *United States, et al.*, 316 U. S. 486, wherein in a suit to restrain the enforcement of a state tax on the purchase and sale of goods at Army Post Exchanges on the ground that such Exchanges are federal instrumentalities and are immune from state taxes, and state taxes as applied to them were unconstitutional, it was held:

> "An appeal from a decree of injunction granted by a three-judge District Court under Jud. Code Section 266, lies directly to this Court, not to the Circuit Court of Appeals."

G. Statement Respecting Opinions.

The court below made certain Findings of Fact and Conclusions of Law, later amended upon motion, and delivered both a majority and a dissenting opinion. Copies of the Amended Findings of Fact and Conclusions of Law and of these opinions are attached hereto as Appendices "A", "B" and "C".

Respectfully submitted,

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APPENDIX "A".

Filed: C. B. Watkins, Clerk. U. S. District Court NDO. Nov. 12 1943. 3:55 P.M.

Civil No. 21897

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO.

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, *Plaintiffs*,

v.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; JOHN A. ZANGERLE, County Auditor of Cuyahoga County, Ohio; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, and CITY OF CLEVELAND, *Defendants*.

Decided ——, 1943.

Before Allen, Circuit Judge, and Jones and Freed, District Judges.

ALLEN, Circuit Judge:

The full court agrees that it has jurisdiction of the parties and of the subject-matter of the litigation. *Query* v. *United States*, 316 U. S. 486. But since we do not unanimously agree that the real estate is being devoted to a public use, it seems advisable to give this question a more formal consideration than that embodied in the findings of fact and conclusions of law.

The real estate involved in this controversy was acquired by the United States through condemnation proceedings instituted by the Federal Emergency Administrator of Public Works, acting pursuant to the authority of Title II, §§ 201, 202 and 203 of the National Industrial Recovery Act of June 16, 1933, 48 Stat. 200, 201, 202, 40 U. S. C., §§ 401, 402, 403. These and related sections of the statute were held unconstitutional by the Court of Appeals for the Sixth Circuit in *United States* v. *Certain Lands in City of Louisville*, 78 Fed. (2d) 684, and by a

District Court in *United States* v. *Certain Lands in City of Detroit*, 12 Fed. Supp. 345, upon the ground that such a taking was not for a public use and that the Congress is not authorized to appropriate money to promote the general welfare of even a great number of residents of the community in which the project was situated. While a writ of certiorari was filed to the decision in *United States* v. *Certain Lands in City of Louisville*, the case was dismissed upon motion by the Government prior to oral argument in the Supreme Court, for the reason that in forty-one of the slum-clearance projects existing throughout the Nation the necessary land had been secured by negotiation, and in eight other cases, while condemnation proceedings were resorted to, no question had been raised as to the legality of the Act. It therefore was concluded that the Louisville case — a practical matter had become moot. 130 A. L. R. 1069, 1072.

Thereafter the United States, first through the Federal Emergency Administrator of Public Works and later through the Federal Public Housing Authority, constructed on the land so acquired the buildings necessary for a low-cost housing slum-clearance project.

In 1937 the Congress enacted the so-called "United States Housing Act of 1937," 50 Stat. 888, 42 U. S. C., §§ 1401-1430. This Act created a Government corporation to be known as the United States Housing Authority, which was to function as an instrumentality of the United States in lending financial assistance to state and local housing agencies for the purpose of improving public housing conditions. In addition, § 1404 (d) empowered the President to transfer to the Authority any right, interest or title held by any department or agency of the Federal Government in any housing of slum-clearance projects constructed or in process of construction on the date of the enactment of the Act, and pursuant thereto the real estate in question was transferred to the Authority by executive order No. 7732, effective November 1, 1937. The property was thereafter leased to the Cleveland Metropolitan Housing Authority under the provisions of § 1412 (b) and (d).

The principal legal question in the case is whether property so acquired may, under the restrictions of the United

States Constitution, be used by the United States for low-cost housing and slum-clearance. It is contended that the employment by the Federal Government of real estate for the purposes described does not constitute a public use, and hence does not fall within the powers of the Federal Government.

With reference to the constitutionality of the United States Housing Act of 1937, which is attacked here, the question is an open one. The previous decisions in this circuit which rule upon a similar question apply only to the housing and slum-clearance provisions of the National Industrial Recovery Act, 40 U. S. C., § 401 et seq. Moreover, in *Helvering* v. *Davis*, 301 U. S. 619, 640, the Supreme Court squarely overruled the doctrine relied upon for those decisions, and held that Congress has the power to impose a tax and appropriate money for the General welfare. *Steward Machine Co.* v. *Davis*, 301 U. S. 548; *United States* v. *Butler*, 297 U. S. 1, 65. Under these pronouncements the Court of Appeals for the Sixth Circuit, in *Bastian* v. *United States*, 118 Fed. (2d) 777, decided that a resettlement project established under the authority of the Emergency Relief Appropriation Act of April 8, 1935, c. 48, 49 Stat. 115, was valid. Substantially the same contentions as are urged against the constitutionality of the present projects were presented in that case and overruled.

Under the recent decisions of the Supreme Court, it is significant that the stated purpose of the Act under consideration is much broader than the purpose of the emergency housing sections of the National Industrial Recovery Act, 40 U. S. C. § 403 (a), which declared that the provisions in question were enacted "with a view to increasing employment quickly (while reasonably securing any loans made by the United States) * * *." The purpose of the 1937 statute is announced in the body of the Act, as follows:

Title 42 U. S. C., § 1401.

"It is hereby declared to be the policy of the United States to promote the general welfare of the Nation

by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation."

It not only is no longer an open question that Congress has power to appropriate money to promote the general welfare, but the determination of the Congress that the projects are in furtherance of the general welfare is decisive, unless arbitrarily made and clearly wrong. *Helvering* v. *Davis*, *supra*, 640, 641. Here there is nothing to show that the legislative choice is clearly wrong. While it is true that in former periods of our history such projects might not have been necessary for the general welfare, it is also true, as stated in *Helvering* v. *Davis*, that "Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation." Despite the difference in character of the slum areas existing in different parts of the country, as was found by the National Commission on Law Observance and Enforcement in its First Report on the Causes of Crime, the delinquency areas in these cities "display similar characteristics poor housing conditions; shifting and decreasing populations; great poverty and dependence; a marked absence of the home-owning class; a largely foreign population of inferior social status; unwholesome types of recreation; inadequate open-air play facilities." On the other hand, it is a matter of widespread knowledge that slum-clearance is a direct remedy for the insanitary, unhealthful conditions that arise out of the crowding and filth of the slum areas. Where old tenements are torn down, and replaced by new, clean, healthful buildings, open to light and air, there is a sharp decline in disease and delinquency. In Liverpool one such slum-clearance project regained 77% of the old population, and another 99%. Yet after a short period crime had decreased among these same residents to

less than 25% of the former figure, tuberculosis dropped from 4 to 1.9 per thousand, and the death rate dropped from 50 to 27 per thousand. 14 American Enc. Social Science, 95.

The problem of eliminating the slum throughout the country is national in scope and it lies within a domain which the individual States cannot reach, and over which the Congress alone has power.

The individual States have long been held to have power to enter into such projects within their borders. *Green* v. *Frazier*, 253 U. S. 233. In such cases the power was upheld on the ground of public use, and we think the same considerations compel the conclusion here that a public use exists. The fact that private individuals receive direct benefit from these projects does not deprive the public of their use. The public, after all, is merely an aggregation of private individuals. Public Schools, public universities, public parks, and many similar governmental institutions and projects which offer definite public benefit extend peculiar benefit to those who have immediate access to them. Direct use by the general public is not essential. *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531. Nor does the use fail to be public upon the ground that the immediate enjoyment of it is limited to a small group or even to a single person. *Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112, 161; *Mt. Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.*, 240 U. S. 30, 32; *Rindge Co.* v. *County of Los Angeles*, 262 U. S. 700, 707.

We think that a project so closely connected with the public health, safety and morals of the citizens of the Nation as the abolition on a national scope of the slum, plainly constitutes a project of public use, and is authorized under the Constitution of the United States. *Oklahoma City* v. *Sanders*, 94 Fed. (2d) 323 (C. C. A. 10). Cf. *Housing Authority of City of Dallas* v. *Higginbotham*, 143 S. W. (2d) 79, 130 A. L. R. 1053.

For these reasons, as well as those stated in the findings of fact and conclusions of law, it follows that the injunction prayed for is allowed.

APPENDIX "B".

Filed. C. B. Watkins, Clerk. U. S. District Court NDO. Nov. 12, 1943, 3:55 PM.

Civil No. 21897

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO.

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, *Plaintiffs*,

v.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; JOHN A. ZANGERLE, County Auditor of Cuyahoga County, Ohio; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, and CITY OF CLEVELAND, *Defendants*.

JONES, J. (Dissenting):

I agree that property held by the United States, and employed by it in the execution of its constitutional powers and functions, may be held exempt from State taxation; but I think that in holding this property in the name of an instrumentality of the United States, for the use of special or selected classes or people, or specially selected groups, and with the intention to lease, and leasing it to a State-created proprietary agency, is not such a governmental function or purpose as to permit its exemption from State, County or Municipal taxation. In such circumstances as presented here, I am of the opinion that the lands were not acquired and are not held for a governmental function or purpose within the right of constitutional sovereignty. I think title and use both are essential in testing the right to tax exemption of property held by the sovereign. If title only is the test, constitutional limitations are without meaning.

It will be noted that Mr. Justice Gray, in writing the opinion for the court in Van Broklin vs. State of Tennessee, 117 U. S. 151 (relied upon so strongly by the Housing

Authority), repeatedly and consistently refers to tax exemption of property of the United States used for governmental functions or purposes. In that case, the property was acquired and held by the United States to enforce and liquidate a tax lien, and this it seems to me was in furtherance of the governmental function of protecting and preserving its revenues. Thus, as I think, property held by the United States, or by an instrumentality of the Federal government, only may be exempt from taxation by a State, County or City in which the property is situated, where the property is devoted to or used for a governmental function or purpose.

No matter how desirable slum clearance and low-cost housing may be, it is not in my opinion such a Federal function as to permit exemption of the property used therefor from State taxation. On the contrary, it consistently has been held that the power of the States to protect the lives, health and property of their citizens, and to preserve good order and public morals, is a power originally and always belonging to the State and not surrendered by them to the general government. Cooley, Principles of Constitutional Law. If the Federal government may acquire and hold property free from State taxation and devote it to any use or purpose not related to governmental functions, there is no limitation of Federal power over State sovereignty. Such right is not implicit in Federal sovereignty, nor is it express or to be implied in the provisions of the Federal Constitution. I think the property involved in this case is subject to the taxes assessed.

Considering the matter from another aspect, what has been done to impair State sovereignty, simply stated, is this: the Federal government has acquired this property and holds it through its agency, the Housing Authority, for the purpose of furnishing low-cost housing to special groups or classes of inhabitants. This certainly is a private use of the land. The State, County and City furnish benefits and services to these residents just as they furnish services, facilities and benefits to other residents. Thus to require the State to give services and protection to this property, and deprive it of its revenues to be used for such purposes,

without making any substantial or adequate provision to compensate for such loss of revenues, seems to me to be contrary to all sense of Federal or Constitutional right,—a dangerous denial of State sovereignty.

APPENDIX "C".

Filed. C. B. Watkins, Clerk. U. S. District Court NDO. Nov. 12, 1943, 3:55 PM.

Civil No. 21897

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, *Plaintiffs*,

vs.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; JOHN A. ZANGERLE, County Auditor of Cuyahoga County, Ohio; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, and CITY OF CLEVELAND, *Defendants*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

I.

The plaintiff, United States of America, acquired the property involved in this proceeding upon the filing of declarations of taking in 1934 and 1935 on the specific dates and in the condemnation proceedings as set out in paragraph V of the complaint. By Executive Order 7732, effective November 1, 1937, all right, interest and title to said land was transferred to the United States Housing Authority (now known as the Federal Public Housing Authority), a wholly owned government corporation created under the Act of September 1, 1937, 50 Stat. 888.

II.

Following acquisition of title by the United States, there was constructed on this property by the plaintiff the necessary buildings and structures in connection with its use as a low-cost housing development. Since completion of the project in 1937, the individual units have been rented to and occupied by individual families of low income.

III.

Prior to January 1, 1940, the project was administered by the Federal Public Housing Authority but since that date it has been leased to the Cleveland Metropolitan Housing Authority, a public housing agency created under the laws of Ohio, under a lease which requires that the property be used only as a site for a low-rent housing project, as measured by standards set by the parties.

IV.

Taxes and assessments for the years 1935 to 1943, inclusive, have been assessed against the property in the name of the United States of America and the total taxes and assessments appearing on the tax duplicates, together with interest and penalties, approximate the sum of $1,558,814.83.

V.

From September 1, 1937 to January 1, 1940, payments in the sum of $16,026.78 per year were made by the United States Housing Authority under agreements whereby this sum was distributed between the City of Cleveland, the County of Cuyahoga and the Board of Education in lieu of taxes for services rendered, pursuant to the authority to make such payments set out in Sec. 13 of the Act of September 1, 1937, 50 Stat. 888, 894. For the years 1940, 1941 and 1942, payments in the same yearly amount, $16,026.78 were made each year by the Cleveland Metropolitan Housing Authority under similar agreements. In 1943, the County of Cuyahoga rescinded its part in these agreements.

VI.

The defendant, John J. Boyle, as County Treasurer of Cuyahoga County, is actively asserting the validity of the taxes so assessed and it is his intention to enforce their collection against the property by suit to foreclose the claimed tax lien. The defendant, John A. Zangerle, County Auditor of Cuyahoga County, the defendant, Board of County Commissioners of Cuyahoga County, and the defendant, City of Cleveland, are also actively asserting that this property is subject to taxation and it is their intention to continue to assess and levy real property taxes there against unless restrained by order of this Court.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the parties and of the subject matter.

II.

Property owned by the United States or by the Federal Public Housing Authority, formerly the United States Housing Authority, is not subject to taxation by the State of Ohio or any of its legal subdivisions. *Mayo et al.* v. *United States*, 319 U. S. 441.

III.

The immunity of federally owned property extends to and includes an immunity from special assessments.

IV.

The use of this property as a site for a low-cost housing project is a public use.

V.

The taxes and assessments appearing of record against this property are null and void and, in the absence of congressional consent, said property will remain immune from

taxation as long as it is owned by the United States or the Federal Public Housing Authority.

VI.

The plaintiffs are entitled to a permanent injunction directing cancelation of the taxes and assessments and restraining the defendants from taking any action to collect or levy taxes against this property in the future.

FLORENCE E. ALLEN,
United States Circuit Judge.
E. B. FREED,
United States District Judge.